ORDER:

1. Challenging the award dated 24.11.2000 passed in I.D. No.139 of 1997 by the first respondent, which was published in G.O. Rt. No. 106, Labour Employment Training & Factories (Lab-I) Department dated 20.01.2001, the present Writ Petition is filed.

2. It is the case of the petitioner that Sugar Industry is a seasonal industry, providing seasonal and permanent employment; seasonal employees are relieved after the crushing season viz. November to April, is over, recalled thereafter depending on the work; the second respondent was appointed as Weigh Bridge Clerk in seasonal employment and subsequently promoted as Yard Supervisor; thereafter, he was involved in a case of false weighment of one bullock cart of sugar cane and so, he was placed under suspension; on a detailed enquiry providing notice and opportunity to the second respondent, and as per the orders of the then District Collector/ Person-in-charge, he was dismissed from service; the respondent preferred I.D. No.139 of 1997 before the first respondent, wherein the first respondent passed award ordering reinstatement of the second respondent into service and also directed to pay compensation of Rs.10,000/- in lieu of back wages. It is further stated that the first respondent erroneously invalidated the enquiry on the ground of violation of principles of natural justice; hence, the Writ Petition.

3. The second respondent filed counter affidavit denying the irregularity allegedly committed by him; that no opportunity was given to him to peruse the records, to cross-examine the witnesses and to defend his case; there is no illegality in the impugned award passed by the first respondent; therefore, the Writ Petition is liable to be dismissed.

4. The learned counsel for the petitioner contended that the findings

of the Tribunal are perverse; that the second respondent never objected to the enquiry proceedings at any time and was given full opportunity in the enquiry and the findings of the enquiry officer are not said to be perverse or contrary; without stating any reasons as to how the findings are perverse or contrary to the evidence on record, the Tribunal gave perverse findings and hence, the award is liable to be set aside.

5 . The learned counsel appearing for the second respondent contended that the findings of the Tribunal are based upon the evidence on record; this Court can not reappreciate the evidence by exercising powers of judicial review and therefore, prayed to dismiss the Writ Petition.

6. For certain irregularities, the second respondent herein was issued charge memo on 13.02.1996 framing six charges which read as follows:

> Charge No.1: His shift duty on 10.02.1996 was during 'C' shift i.e. from 8.00 P.M. to 4.00 A.M. next day. But, he clandestinely stolen the empty weighment card no.7060 which ought to have been made use of on 10.02.1996 in 'A' shift, along with other serial numbers. He has also turn of original copy of token receipt printed No.5457 and another No.7060 which ought to have been used on 10.02.1996 'A' shift.
>
> Charge No.2: It is also noted that the token no.5457/7060 (cancelling the original number) is also corrected the arrival time of the card as 9.00 P.M. over that of 9.00 AM of 'A' shift. Further, it is noticed that in the weighment Register copy dt. 10.02.1996, 'C' shift after the closure of the 'C' shift by the Chitta Clerk, one more entry S.No.6 is entered and added to the quantities of 'C' shift pertaining to cart load.
>
> Charge No.3: It is also alleged that the weigh bridge clerk of 'C' shift on 10.02.1996 has denied that he has written weighment card receipt nNo.14663, dated 10.02.1996 and also the weighment card no.7060 during his shift.
>
> Charge No.4: The Chitta Clerk on dukty on that day (N.Devendraiah) reported that the 6th Card load was not recorded by him and it was done by Sri T.Bhaskar Reddy, Cane Yard Supervisor.
>
> Charge No.5: From the above, it is clear that Sri T.Bhaskar Reddy has

maneuvered to falsify the records and entered one cart load of cane in the weighment card, token, receipt and chitta register, though no such cart load of cane has arrived to the cane yard.

Charge No.6: His act has lowered the image of the organization in public view and that of the management. Also damaged the reputation of factory among the growers.

As the explanation submitted by the second respondent herein was not satisfactory, a regular departmental enquiry was ordered against him. The Enquiry Officer submitted a detailed report holding that the charges levelled against him are proved. A final show-cause notice was issued to the second respondent, but he second respondent failed to give any explanation. Thereafter, another opportunity was also given go him, but even then there was no response. Therefore, by order dated 30.07.1996, the second respondent was dismissed from service.

7. Challenging the same, the second respondent raised a dispute under Section 2 (A) 2 of the Industrial Disputes Act, 1947 before the first respondent contending that the enquiry is illegal, invalid and the charges are perverse.

8. The scope of judicial review is confined to the decision making process and does not extend to the merit of the decision itself. Where a domestic enquiry is held not proper, it is not for this Court as if sitting in an appeal, to go into findings of the domestic Tribunal. This Court can only interfere with the punishment inflicted as a result of the domestic enquiry. Where there is want of good faith or basic error or violation of principles of natural justice or where the findings are perverse or baseless, or the case is one of victimization or unfair labour practice, it is to be indicated by the Tribunal. It is the primary duty of the Tribunal to ascertain whether the principles of natural justice are violated in conducting a departmental enquiry and whether the domestic enquiry was held properly; if the enquiry is held following the due procedure and if the findings of the Enquiry Officer

are based upon any evidence.

9. The Tribunal did not in the first instance frame any issue with regard to conducting of any enquiry by the disciplinary authority by following the principles of natural justice. There is no finding that the enquiry was held to be not valid. Observation of the Tribunal is as under:

> "I have also perused the records/ material on record. There is no record to show that the enquiry officer has followed the principles of natural justice. Therefore, the respondent/management has failed to follow the principles of natural justice. It is the bounden duty of the respondent/management to give opportunity to the petitioner to represent his case in order to prove the charges levelled against him. The petitioner must be heard by the respondent/management and the personal hearing of the petitioner is denied by the respondent/management. The respondent/management has failed to give opportunity to the petitioner to cross-examine the witnesses in a decision given without hearing the petitioner is against the principles of natural justice."

10. To test whether such findings are based upon the material on record or not, copy of report of the Enquiry Officer is produced by the petitioner. The petitioner/management by proceedings dated 13.02.1996 called for explanation for the charges for which the second respondent gave a reply. Not satisfying with the reply, Mr. G.Ramamurthy, Chief Accounts Officer was appointed as Enquiry Officer on 29.02.1996. As per the memos dated 25.06.1996 and 09.04.1996, the second respondent was directed to attend before the Enquiry Officer in the departmental enquiry. A perusal of the statements given by the witnesses, goes to show that no opportunity was given to the second respondent to cross-examine them. Therefore, the Tribunal rightly found that the Enquiry Officer failed to follow the principles of natural justice. There is no indication in any of the statements recorded by the Enquiry Officer to show that the second respondent was given an opportunity to cross-examine the

witnesses. The statements of the witnesses do not contain the signature of the second respondent to infer that those statements were recorded in the presence of the presence of the second respondent/ workman. There was no indication that the Enquiry Officer gave ample opportunity to the second respondent to cross-examine the witnesses.

11. Conducting a domestic enquiry is not an empty formality. When the witnesses were testified on behalf of the department, an opportunity to cross-examine them should be given to the delinquent employee. When the delinquent employee was given no opportunity to cross-examine the witnesses, it is deprival of his rights. In the case on hand, it is not known whether the notices sent by the Enquiry Officer were received by the delinquent or not, as no material in this regard is placed even by the petitioner herein in this case. Even in this Writ Petition, it is not stated that reasonable opportunity was given to the second respondent to cross-examine the witnesses examined on behalf of the management. The findings of the Tribunal can not be said to be perverse or contrary to the evidence on record, since valuable right of the petitioner to cross-examine the witnesses was denied. The Tribunal rightly held that the Enquiry Officer failed to follow the principles of natural justice and therefore, the enquiry is vitiated. Such findings can not be said to be perverse or contrary to law. There are absolutely no grounds to interfere with the findings of the Tribunal.

12. The Writ Petition is devoid of merits and is, accordingly, dismissed. No costs.

08.09.2005 (K.C.Bhanu, J.)

DRK

THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION No. 3437 of 2001

Date: 08.09.2005

Between:

The Managing Director, Sri Venkateswara

Co-operative Sugar Factory, Gajulamandyam,

Renigunta mandal, Chittor district

…Petitioner

and

1)The Industrial Tribunal-cum-Labour Court,

Anantapur, represented by its Presiding Officer-cum-

Chairman, Anantapur, Anantapur district & another

…Respondents